

AMENDED IN ASSEMBLY JUNE 21, 2006

AMENDED IN SENATE MAY 26, 2005

AMENDED IN SENATE MAY 4, 2005

SENATE BILL

No. 989

Introduced by Committee on Environmental Quality (Senators Lowenthal (Chair), Campbell, Chesbro, Cox, Escutia, Figueroa, Kuehl, Runner, and Simitian)

February 22, 2005

An act to amend Sections 25395.84 and 25395.85 of, ~~to add Sections 25395.79.3, 25395.79.4, 25395.79.5, and 25395.81.1 to, to~~ add Article 7 (commencing with Section 25395.102) and Article 8 (commencing with Section 25395.109) to Chapter 6.82 of Division 20 of, and to repeal Article 7 (commencing with Section 25395.105) of Chapter 6.82 of Division 20 of, the Health and Safety Code, relating to hazardous materials.

LEGISLATIVE COUNSEL'S DIGEST

SB 989, as amended, Committee on Environmental Quality. Hazardous material: bona fide ground tenant: remedial actions.

Existing law, the California Land Reuse and Revitalization Act of 2004, provides that an innocent landowner, a bona fide purchaser, or a contiguous property owner, as defined, qualifies for immunity from liability from certain state laws for pollution conditions caused by a release or threatened release of a hazardous material, if the innocent purchaser, bona fide purchaser, or contiguous property owner meets specified conditions. The act also prohibits an agency from requiring an innocent landowner, bona fide purchaser, or contiguous property owner to take a response action under certain state laws. The act

defines the term “agency” as the Department of Toxic Substances Control, the State Water Resources Control Board, or a California regional water quality control board. Existing law repeals the act on January 1, 2010.

~~The act requires a person who enters into an agreement with an agency for oversight of a site assessment to submit a site assessment plan to the agency and requires the agency, based upon a review of the site assessment, to determine whether a response action is necessary to address any unreasonable risk from hazardous materials at the site. If the agency determines that a response action is necessary to prevent or eliminate an unreasonable risk, the bona fide purchaser, innocent landowner, or contiguous property owner is required to submit a response plan to the agency to conduct a response action at the site.~~

~~This bill would define the term “bona fide ground tenant,” and would provide that a certified bona fide ground tenant is not subject to liability under those state laws.~~

~~The bill would require a bona fide ground tenant, *as defined*, who seeks to qualify for immunity from *specified* liability to enter into an agreement with an agency *along with one or more specified persons or entities* that includes the performance of a limited site assessment; and, if the agency determines that a limited response plan is necessary, the preparation and implementation of a limited response plan *agrees to take responsibility for implementation of a site assessment and response plan*. The bill would ~~require a person who wishes to be~~ *authorize* a bona fide ground tenant to request an agency to issue a certification of *immunity* and would require the agency to provide this certification within 60 days after ~~implementation of the limited response plan is completed~~, if the agency makes certain *specified* determinations and the bona fide ground tenant provides ~~specified documentation to the agency~~. *The bill would authorize an agency to withdraw the certification if the agency, after providing the bona fide ground tenant notice and an opportunity to cure, determines that the bona fide ground tenant materially deviated from the agreement or induced the agency to issue the certificate by fraud or intentional misrepresentation.*~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 25395.79.3 is added to the Health and~~
2 ~~Safety Code, to read:~~

3 ~~25395.79.3. (a) “Bona fide ground tenant” means a person~~
4 ~~who meets all of the following conditions:~~

5 ~~(1) The person enters into a ground lease at an eligible site for~~
6 ~~a term of 25 years or more.~~

7 ~~(2) One of the following takes responsibility for site cleanup~~
8 ~~pursuant to applicable law, and contractually agrees with the~~
9 ~~person and with the department or regional board, that a~~
10 ~~substantial amount of the rent received from the person, or other~~
11 ~~assets or income streams acceptable to the department or a~~
12 ~~regional board, will serve as security for, and will be paid into an~~
13 ~~Internal Revenue Code Section 468B fund, or will otherwise be~~
14 ~~dedicated or set aside for, the conduct of a response plan for site~~
15 ~~cleanup pursuant to applicable law:~~

16 ~~(A) The person’s lessor.~~

17 ~~(B) A redevelopment agency under the Polanco~~
18 ~~Redevelopment Act (Article 12.5 (commencing with Section~~
19 ~~33459) of Chapter 4 of Part 1 of Division 24).~~

20 ~~(C) A city under the California Land Environmental~~
21 ~~Restoration and Reuse Act (Chapter 6.10 (commencing with~~
22 ~~Section 25401)).~~

23 ~~(D) Any other person acceptable to the department or a~~
24 ~~regional board.~~

25 ~~(3) All releases of hazardous materials at the site occurred~~
26 ~~before the person acquired the ground lease for the site, except~~
27 ~~for a release of hazardous materials that is of a type, nature, or~~
28 ~~amount that does not require reporting to a regulatory authority~~
29 ~~pursuant to applicable law or other applicable statutory or~~
30 ~~regulatory reporting requirements.~~

31 ~~(4) The person did not cause or contribute to a release~~
32 ~~specified in paragraph (3).~~

33 ~~(5) The person completes all actions directed in a limited~~
34 ~~response plan approved by the department or regional board,~~
35 ~~except for ongoing site monitoring or operation and maintenance~~
36 ~~activities, to make the property safe for human occupancy based~~
37 ~~on its intended use.~~

~~(6) The person's proposed site development is either consistent with a response action approved by the department or regional board pursuant to Article 6 (commencing with Section 25395.90), Chapter 6.8 (commencing with Section 25300), Article 12.5 (commencing with Section 33459) of Chapter 4 of Part 1 of Division 24, or Division 7 (commencing with Section 13000) of the Water Code, or the tenant agrees to pay for any incremental response action implementation costs that are incurred primarily as a result of the tenant's site development or other activities at the site.~~

~~(7) The person is not potentially liable, or affiliated with any other person who is potentially liable, for the release at issue through any of the following circumstances:~~

~~(A) A direct or indirect familial relationship.~~

~~(B) A contractual, corporate, or financial relationship, unless the contractual, corporate, or financial relationship is created by the instrument by which title or possession to the site is conveyed or financed or a contract for the sale of goods or services.~~

~~(C) The result of a reorganization of a business entity that was potentially liable for the hazardous substances at issue.~~

~~(b) For purposes of this section, "release" does not include passive migration.~~

~~SEC. 2. Section 25395.79.4 is added to the Health and Safety Code, to read:~~

~~25395.79.4. "Limited site assessment" means a site assessment conducted pursuant to Section 25395.105 that has the purpose of determining the cleanup, response, or removal action that is required to be done, if any, to make a site safe for human occupancy based on its intended use.~~

~~SEC. 3. Section 25395.79.5 is added to the Health and Safety Code, to read:~~

~~25395.79.5. "Limited response plan" means a written plan submitted to an agency pursuant to Section 25395.107 to conduct those limited removal or remedial actions required to make the site safe for human occupancy based on its intended use.~~

~~SEC. 4. Section 25395.81.1 is added to the Health and Safety Code, to read:~~

~~25395.81.1. A person is not subject to liability under any applicable law for a claim made by any person, other than an agency, for response costs or other damages associated with a~~

1 ~~release or threatened release of a hazardous material at the site~~
2 ~~characterized in the limited site assessment conducted pursuant~~
3 ~~to, or a limited response plan approved pursuant to, Article 7~~
4 ~~(commencing with Section 25395.10), if the person is certified as~~
5 ~~a bona fide ground tenant pursuant to that article.~~

6 ~~SEC. 5.~~

7 *SECTION 1.* Section 25395.84 of the Health and Safety Code
8 is amended to read:

9 25395.84. (a) A court of competent jurisdiction may award
10 reasonable attorneys' fees and experts' fees to a person who
11 initiates a claim under an applicable law for contribution for, or
12 recovery of, response costs incurred for a response action, or for
13 any other response costs incurred at a site, if the person meets all
14 of the following criteria:

15 (1) The person is a bona fide purchaser, an innocent
16 landowner, a contiguous property owner, or a bona fide ground
17 tenant, *as defined in subdivision (b) of Section 25395.102*, and
18 qualifies for immunity pursuant to this chapter.

19 (2) The person is a prevailing party.

20 (3) On or before 20 calendar days prior to the date of the trial
21 on issues relating to the response costs at issue, the person serves
22 on the defendant both of the following:

23 (A) If a response plan has been approved for that site pursuant
24 to Article 6 (commencing with Section 25395.90) or a limited
25 response plan pursuant to Article 7 (commencing with Section
26 25395.102), as applicable, a copy of the approved response plan.

27 (B) A written demand for compensation setting forth the
28 specific sum demanded from the defendant, including a statement
29 of the reasoning supporting the demand. The amount of written
30 demand shall include all response costs sought from the
31 defendant at issue, including all interest, but shall not include
32 litigation expenses, attorneys' fees, and experts' fees. The
33 amount of the demand may include any alleged consequential
34 damages.

35 (b) In determining whether to award reasonable attorneys' fees
36 and experts' fees pursuant to this section, a court shall consider
37 the relationship of the amount of the written demand described in
38 subparagraph (B) of paragraph (3) of subdivision (a) to the total
39 sum of the response costs and, if appropriate and included in the

1 demand, the consequential damages in the written demand, to the
2 final determination of the costs and damages by the trier of fact.

3 (c) A court may award reasonable attorneys' fees and experts'
4 fees to an agency that is the prevailing party in an action arising
5 out of this chapter.

6 ~~SEC. 6.~~

7 *SEC. 2.* Section 25395.85 of the Health and Safety Code is
8 amended to read:

9 25395.85. An innocent landowner, bona fide purchaser,
10 contiguous landowner, or bona fide ground tenant, *as defined in*
11 *subdivision (b) of Section 25395.102*, may seek contribution from
12 any person who is responsible for a discharge or release of
13 hazardous materials for which the innocent landowner, bona fide
14 purchaser, contiguous landowner, or bona fide ground tenant
15 incurs agency oversight costs for the review of a response plan or
16 a limited response plan or oversight of the implementation of a
17 response plan or a limited response plan subject to this chapter.

18 ~~SEC. 7.~~

19 *SEC. 3.* Article 7 (commencing with Section 25395.105) of
20 Chapter 6.82 of Division 20 of the Health and Safety Code is
21 repealed.

22 ~~SEC. 8.~~ Article 7 (commencing with Section 25395.102) is
23 added to Chapter 6.82 of Division 20 of the Health and Safety
24 Code, to read:

25
26 **Article 7. Bona Fide Ground Tenant Certification**
27

28 ~~25395.102. (a) A person who wishes to be certified as a bona~~
29 ~~fide ground tenant may request the agency with which it entered~~
30 ~~into an agreement pursuant to Section 25395.105 to issue a~~
31 ~~certification pursuant to this section. The agency shall provide~~
32 ~~this certification within 60 days after implementation of the~~
33 ~~limited response plan is completed, as provided in subparagraph~~
34 ~~(B) of paragraph (1) of subdivision (b), but only if the agency~~
35 ~~makes the determinations specified in subdivision (b) and the~~
36 ~~bona fide ground tenant provides the documentation specified in~~
37 ~~subdivision (c).~~

38 ~~(b) (1) The agency shall make both of the following~~
39 ~~determinations before issuing a certification pursuant to this~~
40 ~~section:~~

1 ~~(A) The limited response plan is implemented at an eligible~~
2 ~~site.~~

3 ~~(B) The limited response plan has been completed under the~~
4 ~~direction of the agency, except for ongoing site monitoring or~~
5 ~~operation and maintenance activities.~~

6 ~~(2) The agency shall issue the determination as specified in~~
7 ~~paragraph (1) in the following manner:~~

8 ~~(A) Within 60 days after the date the agency approves a~~
9 ~~workplan for a limited response plan the agency acknowledges,~~
10 ~~in writing, that upon proper completion of the limited response~~
11 ~~plan, the person will be eligible for certification as a bona fide~~
12 ~~ground tenant.~~

13 ~~(B) Within 30 days after the date when implementation of the~~
14 ~~limited response plan is commenced, the person notifies the~~
15 ~~department, the local health and building departments, and the~~
16 ~~regional board.~~

17 ~~(C) Within 60 days after the date the implementation of the~~
18 ~~limited response plan is completed, the agency acknowledges in~~
19 ~~writing that the person is a certified bona fide ground tenant for~~
20 ~~purposes of this chapter.~~

21 ~~(e) The bona fide ground tenant shall provide to the agency~~
22 ~~information that documents all of the following:~~

23 ~~(1) The bona fide ground tenant is a party to a lease agreement~~
24 ~~with the owner or sublessor of the property.~~

25 ~~(2) The terms of the lease agreement are commercially~~
26 ~~reasonable under the circumstances existing at the property and~~
27 ~~are not collusive in nature or effect.~~

28 ~~(3) All nonrent payments to the owner have been, and will~~
29 ~~continue to be, disclosed to the agency.~~

30 ~~(4) The site is in compliance with the requirements of Section~~
31 ~~101(40)(D), (E), (F), (G), and (H), inclusive, of the federal act~~
32 ~~(42 U.S.C. Sec. 9601(40)(D) to 9601(40)(H), inclusive).~~

33 ~~(5) The bona fide ground tenant has implemented, and is~~
34 ~~continuing to implement, the limited response plan in~~
35 ~~conjunction with, and consistent with, any, redevelopment or~~
36 ~~revitalization of the area in which the site is located.~~

37 ~~25395.103. An agency may withdraw a certification issued~~
38 ~~pursuant to Section 25395.102 only if the agency that originally~~
39 ~~issued that certification provides reasonable notice and~~

1 opportunity for the holder of the certification to take action to
2 prevent the withdrawal, and makes one the following findings:

3 (a) ~~Material violations continue to exist for one or more of the~~
4 ~~conditions, restrictions, or limitations imposed on the site as part~~
5 ~~of the limited response action or certification.~~

6 (b) ~~Site monitoring or operation and maintenance activities~~
7 ~~that are required for the site as part of the limited response action~~
8 ~~are not adequately funded or are not properly carried out.~~

9 (c) ~~The person induced the agency to approve the completion~~
10 ~~of the limited response action or issue the certification by fraud~~
11 ~~or intentional nondisclosure or misrepresentation.~~

12 25395.104. ~~A bona fide ground tenant that is certified~~
13 ~~pursuant to this article may transfer the certification to a~~
14 ~~subsequent bona fide ground tenant and that subsequent tenant~~
15 ~~shall be subject to the rights and duties conferred by this article~~
16 ~~upon a certified bona fide ground tenant.~~

17 25395.105. (a) ~~A person that is a bona fide ground tenant~~
18 ~~who seeks to qualify for the immunity provided by this chapter~~
19 ~~shall enter into an agreement with an agency pursuant to this~~
20 ~~section that includes the performance of a limited site~~
21 ~~assessment, and, if the agency determines that a limited response~~
22 ~~plan is necessary, the preparation and implementation of a~~
23 ~~limited response plan.~~

24 (b) ~~Before finalizing the agreement, the requested agency shall~~
25 ~~notify other appropriate agencies, including the host jurisdiction.~~

26 (c) ~~A person who enters into an agreement with an agency~~
27 ~~pursuant to this section shall submit sufficient information to the~~
28 ~~agency for the agency to determine whether the site is an eligible~~
29 ~~site and whether the person meets the conditions to qualify as a~~
30 ~~bona fide ground tenant pursuant to this chapter and prepare an~~
31 ~~agreement pursuant to this section.~~

32 (d) (1) ~~A person who enters into an agreement pursuant to this~~
33 ~~section shall agree to take all actions necessary to make the site~~
34 ~~safe for human occupancy based on its intended use. These~~
35 ~~actions may include actions necessary to prevent an imminent~~
36 ~~and substantial endangerment before the approval of a limited~~
37 ~~response plan.~~

38 (2) ~~In determining whether the limited response plan will~~
39 ~~make the site safe for its intended use for purposes of this~~
40 ~~subdivision, the agency shall take into account the intended use~~

1 of the property, in accordance with any changed use of the
2 property:

3 ~~25395.106. (a) (1) A person who enters into an agreement~~
4 ~~with an agency pursuant to Section 25395.105 for the oversight~~
5 ~~of a limited site assessment shall submit a limited site assessment~~
6 ~~plan to the agency to conduct a limited site assessment of the site~~
7 ~~in accordance with the requirements of this section.~~

8 ~~(2) If the agency requires a health risk assessment as part of~~
9 ~~that agreement, the health risk assessment shall be prepared in~~
10 ~~accordance with subdivisions (b), (c), and (d) of Section~~
11 ~~25356.1.5.~~

12 ~~(b) The limited site assessment plan shall include all the~~
13 ~~following:~~

14 ~~(1) Adequate characterization of the hazardous materials at the~~
15 ~~site for the purposes of ensuring that the site is safe for any~~
16 ~~intended development or use.~~

17 ~~(2) Reasonably available information about the site, including~~
18 ~~where appropriate, a risk assessment that evaluates the risk posed~~
19 ~~by any hazardous materials released or threatened to be released~~
20 ~~at, or from, the site, and information regarding reasonably~~
21 ~~anticipated foreseeable uses of the site based on current and~~
22 ~~projected land use and zoning designations.~~

23 ~~(c) A person shall submit the limited site assessment plan to~~
24 ~~the agency for review and approval.~~

25 ~~(d) The agency shall evaluate the adequacy of the limited site~~
26 ~~assessment plan to ensure it contains all necessary information.~~

27 ~~(e) After evaluating the limited site assessment plan, if the~~
28 ~~agency finds that the limited site assessment is adequate to~~
29 ~~address the intended uses or development of the site the agency~~
30 ~~shall approve the limited site assessment and provide notification~~
31 ~~to appropriate persons.~~

32 ~~25395.107. (a) After implementing the limited site~~
33 ~~assessment plan, the person shall submit a report of the findings~~
34 ~~made pursuant to the plan to the agency. Based upon a review of~~
35 ~~this information, the agency shall determine whether a limited~~
36 ~~response plan is required to be developed to ensure that the site is~~
37 ~~safe for human occupancy based on its intended use.~~

38 ~~(b) If upon review of the limited site assessment prepared~~
39 ~~pursuant to this article, the agency determines that a limited~~
40 ~~response plan is necessary to ensure that the site is safe for its~~

1 intended use, the bona fide ground tenant shall submit a limited
2 response plan to the agency to conduct a limited response action
3 at the site, in conformance with the agreement entered into
4 pursuant to Section 25395.105. The agency shall not require the
5 limited response plan to address the remediation of deep soil or
6 groundwater contamination, unless the agency determines this
7 remediation is necessary to make the site safe for the intended
8 human use. The limited response plan shall include all of the
9 following:

10 (1) An opportunity for the public, other agencies, and the host
11 jurisdiction to participate in decisions regarding the limited
12 response plan, taking into consideration the nature of the
13 community interest.

14 (A) The methods for public participation proposed in the
15 response plan shall include a public notice and opportunity for
16 public review and comment, and may include, but are not limited
17 to, the use of factsheets, public notices, direct notification of
18 interested parties, public meetings, and an opportunity to
19 comment on the proposed response plan prior to agency
20 approval.

21 (B) To the extent possible, the agency shall coordinate its
22 public participation activities with those undertaken by the host
23 jurisdiction and other agencies associated with the development
24 of the property, to avoid duplication to the extent feasible.

25 (2) Identification of the release or threatened release that is the
26 subject of the limited response plan and documentation that the
27 limited response plan is based on an adequate characterization of
28 the site.

29 (3) An identification of the limited response plan objectives
30 and the proposed remedy, and an identification of the reasonably
31 anticipated future land uses of the site and of the current and
32 projected land use and zoning designations. This identification
33 shall include confirmation by the host jurisdiction that the
34 anticipated future land uses and current and projected land uses
35 and zoning designations are accurate.

36 (4) A description of activities that will be implemented to
37 control all endangerment that may occur during the limited
38 response action at the site.

39 (5) A description of all land use controls that are part of the
40 response action.

1 ~~(6) A description of wastes other than hazardous materials at~~
2 ~~the site and how that waste will be managed in conjunction with~~
3 ~~the response action.~~

4 ~~(7) Provisions for the removal of containment or storage~~
5 ~~vessels and other sources of contamination, including soils and~~
6 ~~free product, that cause an imminent or substantial~~
7 ~~endangerment.~~

8 ~~(8) Provisions for the agency to require further response~~
9 ~~actions based on the discovery of hazardous materials that pose~~
10 ~~an unreasonable risk to human health and safety or the~~
11 ~~environment that are discovered during the course of the limited~~
12 ~~response action or subsequent development of the site.~~

13 ~~(9) Any other information that the agency reasonably~~
14 ~~determines is necessary.~~

15 ~~(e) The agency shall evaluate the adequacy of the limited~~
16 ~~response plan submitted pursuant to subdivision (b) and shall~~
17 ~~approve the plan if the agency makes all of the following~~
18 ~~findings:~~

19 ~~(1) The plan contains the information required by subdivision~~
20 ~~(b).~~

21 ~~(2) When implemented, the plan will place the site in a~~
22 ~~condition that allows it to be used for its reasonably anticipated~~
23 ~~future land use without substantial risk to the human health and~~
24 ~~safety of the anticipated occupants of the site.~~

25 ~~(3) The plan addresses all public comments.~~

26 ~~(4) If applicable, the plan provides for land use or engineering~~
27 ~~controls, or other ongoing site monitoring or operation and~~
28 ~~maintenance activities, that are part of the remedy contained in~~
29 ~~the limited response plan, and requires the bona fide ground~~
30 ~~tenant to submit periodic reports to the agency to demonstrate~~
31 ~~continued compliance with the requirements of this paragraph.~~

32 ~~(d) Upon approval of the limited response plan by the agency,~~
33 ~~the agency shall notify all appropriate persons, including the host~~
34 ~~jurisdiction.~~

35 ~~(e) If the use of the property changes, after a limited response~~
36 ~~plan is approved, to a use that requires a higher level of~~
37 ~~protection, the agency may require the preparation and~~
38 ~~implementation of a new limited response plan pursuant to this~~
39 ~~article.~~

1 ~~25395.108.— (a) A person, who acquires a property from a~~
2 ~~bona fide ground tenant that was previously issued a certificate~~
3 ~~of completion for a limited response plan required by this article,~~
4 ~~may qualify as a bona fide ground tenant by demonstrating to the~~
5 ~~agency that the person meets the bona fide ground tenant~~
6 ~~eligibility requirements of this chapter.~~

7 ~~(b) A person may withdraw from an agreement entered into~~
8 ~~pursuant to this article by providing a 30-day written notice to the~~
9 ~~agency and doing both of the following:~~

10 ~~(1) Reimbursing the agency for all costs incurred by the~~
11 ~~agency pursuant to the agreement.~~

12 ~~(2) Demonstrating to the satisfaction of the agency, that~~
13 ~~conditions at the site to which the agreement applies do not pose~~
14 ~~an endangerment to public health and safety or the environment.~~
15 ~~If the agency determines that conditions at the site pose an~~
16 ~~endangerment to public health, safety, or the environment, this~~
17 ~~article does not prevent the agency from exercising its authority~~
18 ~~to take appropriate response actions or to cause the person~~
19 ~~responsible for the endangerment to take appropriate response~~
20 ~~actions.~~

21 ~~(c) A person who enters into an agreement with an agency~~
22 ~~pursuant to this article shall reimburse the agency for all agency~~
23 ~~costs, including, but not limited to, costs incurred while~~
24 ~~reviewing a limited site assessment plan or a limited response~~
25 ~~plan or overseeing the implementation of a site assessment or~~
26 ~~response plan by the person pursuant to this article, except that~~
27 ~~the department's costs shall be reimbursed pursuant to Chapter~~
28 ~~6.66 (commencing with Section 25269) and shall be recoverable~~
29 ~~pursuant to Section 25360.~~

30 ~~(d) The entry into an agreement pursuant to this article shall~~
31 ~~not constitute an admission of fact or liability or conclusion of~~
32 ~~law for any purpose or proceeding and no person who enters into~~
33 ~~an agreement under this article shall be deemed liable under any~~
34 ~~other provision of law solely by reason of entering into that~~
35 ~~agreement.~~

36 ~~SEC. 4. Article 7 (commencing with Section 25395.102) is~~
37 ~~added to Chapter 6.82 of Division 20 of the Public Resources~~
38 ~~Code, to read:~~

Article 7. *Bona Fide Ground Tenant Immunity*

25395.102. (a) *Except as otherwise provided in this article, the definitions in Article 2 (commencing with Section 25395.63) and Article 6 (commencing with Section 25395.90) shall govern the interpretation of this article.*

(b) *“Bona fide ground tenant” means a person who meets the following conditions:*

(1) *The person is acceptable to the agency for entering into an agreement pursuant to Article 6 (commencing with Section 25395.90) or this article, and the person requires a non-fee interest in and control of the real property at a site on or after January 1, 2007, who acquires the interest and control pursuant to one of the following:*

(A) *A ground lease with a term of 25 years or more.*

(B) *An easement with a term of 25 years or more.*

(C) *Any other legal means for site access and use that provides for a term of 25 years or more.*

(2) *The person enters into an agreement with an agency pursuant to this article along with any of the following:*

(A) *The person’s lessor or easement grantor.*

(B) *A redevelopment agency.*

(C) *A city or county.*

(D) *Any other person acceptable to the agency.*

(3) *All releases of hazardous materials at the site occurred before the person obtained legal access to and control over the site, except for a release that is of a type, nature or amount that does not require reporting to a regulatory authority pursuant to applicable law or other applicable statutory or regulatory reporting requirements.*

(4) *The person did not cause or contribute to a release of hazardous materials at the site, other than a release that is of a type, nature or amount that does not require reporting to a regulatory authority pursuant to applicable law or other applicable statutory or regulatory reporting requirements.*

(5) *The person has contractually agreed with a person or entity set forth in paragraph (2) that either of the following revenue sources be dedicated to, or pledge to secure a loan the proceeds of which are dedicated to, implementation of the response plan approved pursuant to this article:*

1 (A) All payments by that person to the site owner, at least until
2 such time as a response plan has been approved by the agency
3 and the agency has determined that something less than all of the
4 payments are sufficient to implement the response plan.

5 (B) An alternate asset or revenue stream that is acceptable to
6 the agency.

7 (C) To ensure that the revenue stream required by this
8 paragraph remains available to implement the response plan
9 approved pursuant to this article, an Internal Revenue Code
10 Section 468B settlement trust or other acceptable security
11 mechanism may be utilized. Agreements pursuant to this article
12 shall permit subordination of the security mechanism to permit
13 financing for site cleanup or development.

14 (6) The person is not potentially liable, or affiliated with a
15 person who is potentially liable, for the release at issue through
16 any of the following circumstances:

17 (A) A direct or indirect familial relationship.

18 (B) A contractual, corporate, or financial relationship, unless
19 the contractual, corporate, or financial relationship is created by
20 the instrument by which the person obtains control and
21 implements the development of the site, or is created by a
22 contract for the sale of goods or services.

23 (C) The result of a reorganization of a business entity that was
24 potentially liable for the hazardous substances at issue.

25 (c) For the purpose of this section, “release” does not include
26 passive migration.

27 (d) “Site” shall have the definition set forth in Section
28 25395.79.2, except that the exclusion for petroleum sites set forth
29 in paragraph (3) of subdivision (b) of that section shall not
30 apply.

31 25395.103. (a) A bona fide ground tenant who seeks to
32 qualify for the immunity pursuant to Section 25395.104 shall
33 enter into an agreement pursuant to this article with an agency,
34 and an entity which agrees to take responsibility for
35 implementing a site assessment and response plan pursuant to
36 subdivision (b). The entity shall be one of the following:

37 (1) The person’s lessor.

38 (2) A redevelopment agency.

39 (3) A city or county.

40 (4) Any other person acceptable to the agency.

1 (b) Except as otherwise provided in subdivision (c), an
2 agreement entered into pursuant to this article shall provide that
3 the entity that accepts responsibility for the site assessment and
4 response plan shall conduct a site assessment that substantially
5 complies with the requirements of Section 25395.94 and
6 implement a response plan that substantially complies with the
7 requirements of Section 25395.96. Both the site assessment and
8 the response plan shall be approved by the agency. Except as
9 necessary to comply with provisions of this article that differ
10 from Article 6 (commencing with Section 25395.90), agreements
11 pursuant to this article shall substantially conform to agreements
12 developed to implement Article 6 (commencing with Section
13 25395.90).

14 (c) An agreement entered into pursuant to this article shall
15 provide that the bona fide ground tenant is responsible to the
16 agency for only the portions of the site assessment and the
17 portions of the response plan that the agency determines to be
18 necessary to allow the site to be used for its intended purposes
19 without unreasonable risk to the human health and safety of the
20 intended site occupants. The bona fide ground tenant shall not be
21 responsible to the agency for any other assessment or
22 remediation of soil, soil gas, groundwater, or other media at the
23 site; nor for any assessment or remediation adjacent to, or in the
24 vicinity of, the site. The agreement shall also specify the portion
25 of the site assessment and the response plan to be implemented
26 by the party other than the bona fide ground tenant.

27 (d) Before finalizing the agreement, the agency shall notify
28 other appropriate agencies, including the host jurisdiction. The
29 agency shall keep, in a permanent archive, copies of all finalized
30 agreements entered into pursuant to this article.

31 (e) Agreements entered under this article shall not be subject
32 to Chapter 2 (commencing with Section 10290) of Part 2 of
33 Division 2 of the Public Contract Code.

34 (f) A person who enters into an agreement under this article
35 shall submit sufficient information to the agency for the agency
36 to determine whether the site is eligible, whether the person
37 meets the conditions to qualify as a bona fide ground tenant, and
38 to prepare an agreement pursuant to this section.

1 25395.104. (a) *Except as otherwise provided in this section,*
2 *a bona fide ground tenant shall qualify for the following*
3 *immunities:*

4 (1) *The bona fide ground tenant shall not be liable under any*
5 *applicable law for a claim made by a person, other than an*
6 *agency, for response costs or other relief associated with a*
7 *release or threatened release of a hazardous material at the site*
8 *once the bona fide ground tenant obtains a certification pursuant*
9 *to subdivision (c) that the immunity provided by this section has*
10 *attached.*

11 (2) (A) *Except as provided in subparagraph (B), an agency*
12 *shall not, subsequent to the date of the agreement, take any*
13 *action under any applicable law to require a bona fide ground*
14 *tenant to take a response action on account of a release or*
15 *threatened release of a hazardous material at a site.*

16 (B) *The agency that entered into the agreement pursuant to*
17 *this article may take action under any applicable law to enforce*
18 *the conditions imposed on the bona fide ground tenant pursuant*
19 *to the agreement.*

20 (b) *Except as provided in subparagraph (B) of paragraph (2)*
21 *of subdivision (a), the immunity provided in this section shall*
22 *attach to a bona fide ground tenant once the agency certifies in*
23 *writing, pursuant to subdivision (c), that all of the following have*
24 *occurred:*

25 (1) *A site assessment has been completed sufficient for the*
26 *agency to determine the remedial measures necessary to allow*
27 *the site to be used for its intended purposes without unreasonable*
28 *risk to the human health and safety of the intended site*
29 *occupants.*

30 (2) *Except for site monitoring, reporting, institutional*
31 *controls, operation and maintenance activities, and other*
32 *ongoing obligations of the bona fide ground tenant, if any, the*
33 *portion of the site investigation and the response plan necessary*
34 *to allow the site to be used for its intended purposes without*
35 *unreasonable risk to the human health and safety of the intended*
36 *site occupants, including any confirmation sampling required by*
37 *the agency to confirm that this standard has been met, has been*
38 *implemented to the agency's satisfaction.*

39 (3) *To the extent required in the agreement entered into*
40 *pursuant to this article, all wells, piping, extraction systems, or*

1 similar materials or equipment required for the conduct of
2 remediation efforts to be performed by a person other than the
3 bona fide ground tenant have either been installed to the
4 agency's satisfaction or have been accounted for to the agency's
5 satisfaction in site development plans and specifications.

6 (4) If applicable, a memorandum of the agreement entered
7 into pursuant to this article and satisfactory to the agency has
8 been recorded with the recorder's office of the county where the
9 site is located. The memorandum shall indicate the human use
10 addressed in the agreement, any institutional or engineering
11 controls provided for in the response plan, and contact
12 information for the parties to the agreement.

13 (c) A party to an agreement pursuant to this article may
14 request the agency to issue a written certification confirming that
15 the conditions stated in subdivision (b) have been met and that
16 the immunity provided for in this section is in effect. The agency
17 shall provide this certification within 60 days of the date it finds
18 that the conditions stated in subdivision (b) have been met.

19 (d) The agency that issued a certification pursuant to
20 subdivision (c) may withdraw that certification if it first provides
21 reasonable notice and opportunity for the bona fide ground
22 tenant to take action to prevent the withdrawal, and subsequent
23 to the notice and cure opportunity makes any of the following
24 findings:

25 (1) A material deviation from those requirements applicable to
26 the bona fide ground tenant under the agreement entered into
27 pursuant to this article that has not been approved by the agency
28 exists and continues to exist subsequent to the notice and cure
29 period.

30 (2) The bona fide ground tenant induced the agency to issue
31 the certification by fraud, or intentional nondisclosure or
32 misrepresentation.

33 (e) Upon the agency's certification pursuant to subdivision
34 (c), the immunity provided in this section extends to all of the
35 following:

36 (1) The bona fide ground tenant.

37 (2) A person who acquires an interest in or a dwelling unit at
38 the site from the bona fide ground tenant.

39 (3) A person who provides financing to the bona fide ground
40 tenant or a person specified in paragraph (2).

1 (f) *The immunity provided in this section does not extend to a*
2 *person who was a responsible party, as that term is defined in*
3 *Section 25323.5 for the release at the site prior to acquiring an*
4 *interest in the site from the bona fide ground tenant or providing*
5 *financing as specified in paragraph (3) of subdivision (e).*

6 (g) *The immunity provided in this section shall be in addition*
7 *to any other immunity provided by law.*

8 (h) *This section shall not modify or limit the existing authority*
9 *of a state or local agency to impose a condition on the issuance*
10 *of a discretionary permit relating to the development, use, or*
11 *occupancy of a site.*

12 (i) *This section shall not relieve a bona fide ground tenant*
13 *from reporting, disclosure, and notification requirements under*
14 *any applicable statute.*

15 (j) *The entry into an agreement pursuant to this article shall*
16 *not constitute an admission of any fact or liability or conclusion*
17 *of law for any purpose or proceeding and a person who enters*
18 *into an agreement under this article shall not be deemed liable*
19 *under any other provision of law solely by reason of entering into*
20 *the agreement.*

21 (k) *If the use of the property changes, after a response plan is*
22 *approved, to a use that requires a higher level of protection, the*
23 *agency may require the preparation and implementation of a new*
24 *response plan pursuant to this article.*

25 (l) *A bona fide ground tenant that purchases a site subsequent*
26 *to leasing, or taking an easement in the site, may convert its*
27 *status to that of a bona fide purchaser pursuant to Article 6*
28 *(commencing with Section 25395.90) if the bona fide ground*
29 *tenant meets the requirements of section 25395.69 and Article 6*
30 *(commencing with Section 25395.90). Upon the conversion, the*
31 *bona fide ground tenant shall qualify for any and all immunities*
32 *available to a bona fide purchaser under this chapter.*

33 (m) *If the response plan proposed allows the site to be used for*
34 *its intended purposes without unreasonable risk to the human*
35 *health and safety of the intended site occupants through the use*
36 *of institutional or engineering controls or monitoring, the bona*
37 *fide ground tenant seeking immunity shall provide periodic*
38 *reports as required by the agency to demonstrate that there*
39 *remains no unreasonable risk to the human health and safety of*
40 *the intended occupant. The bona fide ground tenant shall not*

1 *make any change in use of the site that is inconsistent with any*
2 *land use control recorded for the site unless the change is*
3 *approved by the agency pursuant to Sections 25233 and 25234*
4 *or, in the case of the board or a regional board, substantially*
5 *similar procedures.*

6 25395.105. (a) *Notwithstanding subdivision (b) of Section*
7 *25395.102, on and after the date when the immunity specified in*
8 *Section 25395.104 attaches, a person shall remain eligible for*
9 *immunity if a release of hazardous materials at the site during a*
10 *response action is de minimis and the agency determines that all*
11 *necessary response actions to address the release have been*
12 *taken.*

13 (b) *Notwithstanding subdivision (b) of Section 25395.102 with*
14 *respect to a release of hazardous materials at the site that is not*
15 *characterized in or through the site investigation or the response*
16 *plan, a person shall remain eligible for the immunity provided in*
17 *Section 25395.104, if the person takes response actions with*
18 *respect to the release of hazardous materials that the agency*
19 *determines to be necessary to prevent unreasonable risk to the*
20 *human health and safety of the intended site occupants specified*
21 *in the agreement entered into pursuant to this article.*

22 (c) *Notwithstanding subdivision (b) of Section 25395.102, on*
23 *and after the date when the immunity specified in Section*
24 *25395.104 attaches, a person shall remain eligible for immunity*
25 *obtained pursuant to this article with regard to a release that is*
26 *the subject of a certificate of completion and immunities issued*
27 *pursuant to Section 25395.104. If the person causes or*
28 *contributes to a release of a hazardous material, other than a de*
29 *minimis release, the person shall be responsible for responding*
30 *to that release in accordance with all applicable law.*

31 25395.106. (a) *This article does not provide immunity from*
32 *any of the following:*

33 (1) *Liability for bodily injury or wrongful death.*

34 (2) *A requirement imposed under Chapter 6.5 (commencing*
35 *with Section 25100), including, but not limited to, corrective*
36 *action and closure and postclosure requirements.*

37 (3) *A Criminal act.*

38 (4) *A permit violation.*

39 (5) *A contractual indemnity agreement between a purchaser*
40 *and seller of real property.*

(6) *New releases, other than de minimis releases, of hazardous materials that are caused or contributed to by a bona fide ground tenant.*

(b) *This article does not limit the authority of an agency to conduct a response action that is necessary to protect public health and safety or the environment pursuant to an applicable statute.*

(c) *This article does not do either of the following:*

(1) *Limit a defense to liability that may be available to a person under any other provision of law.*

(2) *Impose a new obligation on a bona fide ground tenant other than those specifically assumed by the bona fide ground tenant under an agreement entered into pursuant to this article.*

25395.107. *A bona fide ground tenant shall be entitled to seek contribution, and to recover attorney's fees and costs pursuant to Sections 25395.84 and 25395.85 in the same manner and to the same extent as if that person had been deemed a bona fide prospective purchaser, innocent landowner or contiguous land owner.*

~~SEC. 9:~~

SEC. 5. Article 8 (commencing with Section 25395.109) is added to Chapter 6.82 of Division 20 of the Health and Safety Code, to read:

Article 8. Repeal

25395.109. This chapter shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2010, deletes or extends that date.

CORRECTIONS:

Text — Pages 12 and 13.

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